IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SECOND DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 8618 of 1994

Between:

Khazi Syed Ameerulla Hussaini S/o. late Syed Khaleemullah Khan
R/o. Kondapalli Kondapalli Post,
Krishna District.

..... PETITIONER

AND

1. Pare Satyanarayana S/o. Subbaiah
   Ibrahimpatnam village and Mandal, Krishna District.
2. Potharaju Narasimha Rao S/o. late Appaiah
   Ibrahimpatnam village and Mandal, Krishna District.
3. The District Judge, Krishna-cum-Appellate Tenancy Tribunal
   Machilipatnam, Krishna District.
4. II Addl.District.Munsif-cum-Spl.Officer for Andhra Tenancy Cases
   Vijayawada Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly in the nature of a writ of certiorari and call for the records relating to and connected with CMA NO.18/92 on the file of the 3rd respondent Appellate Tenancy Tribunal-cum-District Judge, Krishna at Machilipatnam and to quash or set aside the judgment dated 20/07/1993 passed therein in CMA NO.18/92 reversing the decree and judgment of the 4th respondent Tenancy Tribunal-cum-II Additional District Munsif, Vijayawada.

Counsel for the Petitioner: MR.P.PRABHAKAR RAO

Counsel for the Respondent No.2: MR. A. RAMANARAYANA.

Counsel for the Respondent Nos.3 &4: GP FOR REVENUE

The Court made the following:

ORDER:

Heard Sri P. Prabhakara Rao, the learned counsel for the Petitioner, Sri A. Ramanarayana, the learned counsel appearing on behalf of the second respondent and the learned Government Pleader appearing for the third and fourth respondents herein.

The petitioner herein, who is a Government Khazi and claiming to be the landlord, filed this writ petition *inter alia* seeking writ of certiorari challenging the correctness of the orders passed in C.M.A. No.18 of 1992 dated 20.07.1993 on the file of the Appellate Tribunal under the Andhra Pradesh (Andhra Area) Tenancy Act (hereinafter referred to as 'the Act') allowing the appeal at the instance of the second respondent herein as against the orders of eviction ordered at the instance of the petitioner herein in A.T.C.No.14 of 1981 by the Primary Appellate Tribunal.

The facts in brief are that the petitioner is a Khaji claiming himself as landlord filed eviction petition against both the first and second respondents under Sections 13(1) (a) (b) read with S.16 and rule 3(1) of the Act *inter alia* on the ground that he is earlier was a tenant, but subsequently he surrendered the possession, and thereupon, the first respondent who entered into the said land. However, later on both the respondents started asserting their rights as lessees. In view of the same, the petitioner seeks eviction of both the respondents. The Primary Tribunal after regular enquiry initially allowed the said application and ordered eviction against both the respondents. However, in appeal at the instance of the second respondent, the appellate authority while considering the specific allegations made by the petitioner in the very application filed under Section 13 of the said Act, calling him as trespasser, held that such a petition is not maintainable under the provisions of the above said act.

The learned counsel appearing for the petitioner submits that the expression "trespasser" is totally out of the context, and therefore, the second respondent is originally a tenant and inspite of his surrender, he claims to be in possession and therefore, he has impleaded as party. Though according to him, it is the first respondent who is in actual possession as a lessee.

Sri A. Ramanarayana, the learned counsel appearing for the second respondent submits that the application has to be rejected especially for the purpose of jurisdiction in view of the averments made in the petition, but not on the contentions raised by the contesting respondent. Therefore, he submits that once the petitioner says that the second respondent is a trespasser and rightly allowed the appeal and which does not call for interference by way of writ of certiorari.

Considering the submissions made on either side and also on a perusal of the material, the only question that calls for consideration is whether the application that has been filed and framed by the petitioner herein was purported to be under section 13 of the said Act, is maintainable as against the second respondent herein.

There is no dispute to the basic facts that the petitioner is the landlord in the capacity of Khaji filed eviction petition against both the first and second respondents. However, according to the petitioner, it is the second respondent who was initially a lessee and subsequent to his surrender, the first respondent was inducted into possession as a lessee. These allegations were totally denied by both the respondents *inter alia* claiming the leasehold rights in respect of very same land individually by both of them. In the application filed by the petitioner it is the specific averment that the 2nd respondent has vacated the land and it is the first respondent who was let into the possession. Thereupon, it is his case that the second respondent has become a trespasser and, therefore, having regard to the assertions made by the respondents 1 and 2 directed each other necessary and he has to implead both of them and seek possession of the land. No doubt, the petitioner in an attempt to seek the eviction of both the respondents from the land has claimed that it is the 1st respondent who is the tenant and there is no dispute about the fact that the second respondent was a tenant, but later he surrendered the possession. Even on a reading of the entire allegations of the petition as has been filed by the petitioner herein, the second respondent though was originally a lessee, but did not continue to remain in the same capacity, because he has paid the amounts and surrendered the said land. Therefore, any possession subsequent to such surrender would not be in the capacity of the lessee, and therefore, he has rightly called the second respondent as trespasser. The expression of “trespasser” is not certainly read out of the context by the lower appellate court, but has taken into consideration on par with the other findings. The lower appellate court has also taken into consideration the inconsistent stand taken by both the petitioner as well as the second respondent

herein, the petitioner in one way calls the second respondent as a tenant earlier, but, yet as on the date of filing of the application also calls him as trespasser. Whereas the second respondent claims to be treated as tenant but having regard to the allegations made in the petition, he says that the petition is not maintainable as against the trespasser. Having regard to the reasons given and the findings as arrived at by the appellate Tribunal, I do not find any merit warranting interference of this Court, in exercise of the jurisdiction conferred under Article 227 of the Constitution of India.

Accordingly, the writ petition is dismissed. It is needless to observe that the petitioner can approach a competent Court of jurisdiction for necessary reliefs as against the second respondent, which shall be considered and disposed of on merits, uninfluenced by any of the findings given in this petition. It is also open for the second respondent seeking relief in respect of limitation.

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22-07-2004

Glv/KA

To

1. The District Judge, Krishna-cum-Appellate Tenancy Tribunal
   Machilipatnam, Krishna District.
2. The II Additional District.Munsif-cum-Spl.Officer for Andhra Tenancy Cases, Vijayawada Krishna District.

3. Two C.Cs to the Government Pleader for Revenue, High Court Buildings, Hyderabad. (O.U.T)

4. Two C D copies.